

BEFORE PUBLIC LAW BOARD NO. 7566

CASE NO. 183

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DIVISION – IBT RAIL CONFERENCE

and

WISCONSIN CENTRAL LTD.

Carrier's File WC-BMWED-2019-00003

Claimants: G. Wenner, E. Kivisto, P. Lee

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STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated Rules 1 and 13 of the Agreement when it supplanted its existing workforce in an effort to deny an overtime work opportunity for Messrs. G. Wenner, E. Kivisto and P. Lee by assigning non-agreement employees, employed by Lakehead Constructors to perform the duties of snow removal, plowing and cleaning switches, at Proctor Yard, in Proctor, Minnesota on January 2, 3 and 4, 2019 (Carrier's File WC-BMWED-2019-00003 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimants G. Wenner, E. Kivisto and P. Lee shall now be compensated at the applicable rates of pay of each of their respective positions, for a total of twenty-four (24) hours at the applicable time and one-half and double time rates of pay.”

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7566 has jurisdiction over the parties and the dispute involved herein.

The Organization maintains that numerous Rules govern this claim. Rule 1 provides for the Scope of work and recognizes that that work generally recognized as Maintenance of Way work would remain Maintenance of Way work. The work at issue was usual and customary work and therefore the work of the Maintenance of Way

employees. Rule 13K provides that the Carrier cannot change the work generally recognized as belonging to Maintenance of Way employees, yet the Carrier did. Rule 13L provides the expectations of the parties and what must be met by the Carrier. Rule 13N prohibits supplanting overtime opportunities for Maintenance of Way employees.

The Organization claims that Organization-represented forces were available to perform this snow plowing work. Instead of Claimants, the Carrier used contractors Stack Brothers or Wren Works to perform the duties of snow plowing. These contractors supplanted Carrier forces.

The Organization maintains that the Carrier defense is not persuasive. The question is whether Organization forces were available and had customarily performed this work. Moreover, the Carrier's claim of specialized equipment should be rejected because the Organization sent an April 1, 2019 letter to the Carrier detailing the locally-available Carrier equipment on Carrier property in the Pokegama Yard where some of the removal work was performed. The letter was never refuted.

The Carrier responds that the claim should be denied because the Organization has failed to prove a claim for which relief should be granted. The Carrier did not violate the Agreement when it assigned outside forces to perform the snow removal work. In a March 11, 2019 letter, the Carrier responded to the claim:

We do not have the equipment available to use that the contractors were using. The contractors were using a plow truck, dump truck, skidsteer, salt truck, dozer, and grader to do the claimed work. If we do not have the correct equipment to do the work, our employees cannot do it.

The Carrier also responds that there is insufficient evidence in the record to support the Claim. There is no evidence that the work cited in the claim was ever performed. The Carrier cites various awards in support of denying the claim. In those awards, the claim was denied due to a lack of documentation. Those denied claims had a lack of documentation just as this claim.

Rule 1 provides:

These rules shall be the agreement between the Canadian National Railway Company (former Wisconsin Central Ltd.) and its employees of the classifications herein set forth represented by the Brotherhood of

Maintenance of Way Employees, engaged in work generally recognized as Maintenance of Way work, such as, inspection, construction, repair and maintenance of bridges, culverts, buildings, and other structures, tracks, fences, and roadbed, and shall govern the rates of pay, rules and working conditions of such employees. This paragraph shall neither expand nor contract the respective rights of the parties, nor infringe upon the contractual rights of other railroad crafts in effect on the date of this agreement.

Rule 13 Paragraph N provides:

The Company will not use the provisions of this rule to use outside contractors in a way that would supplant the use of the existing workforce during off hours and on rest days in an effort to deny the existing workforce overtime opportunities. This commitment does not require the company to call individuals from another location to perform work in lieu of using an outside contractor.

Rule 13 Paragraph L provides:

The provisions of paragraph K remain in effect when forces are temporarily reduced when a suspension of operations in whole or in part is due to a labor dispute between the company and any of its employees and during temporary force reductions under emergency conditions, such as flood, snowstorm, hurricane, tornado, earthquake, fire, or a labor dispute other than as identified above, provided that such conditions result in suspension of operations in whole or in part.

The evidence shows Claimants were regularly assigned to their respective positions capable of operating equipment which could have been used to perform the disputed work. Claimants were available to perform the work. The Carrier claims specialized equipment was necessary for snow removal. The Organization responded within an April 1, 2019 letter providing:

The Carrier claims that the work that is the subject of this claim could not be performed by the Claimants due to CN not possessing the equipment to do so. This statement is not only ludicrous but more importantly highly disingenuous.

The Claimants have confirmed that the equipment available at Proctor Yard includes, but is not limited to the following:

2 Front End Loaders (1 equipped with a snowblower attachment)

Grader Backhoe Truck capable of plowing/salting/sanding

AF1 Blower Truck

2 Air compressors with snow blowing attachments

Snowfighter

Jordan Spreader

This equipment could have and should have been utilized by the Claimants to perform the snow removal in question. BMWED members including the Claimants have been performing this work since the inception of the Collective Bargaining Agreement.

The Carrier defends that the day forces would be using the equipment, but that they were working alongside the contractors. However, the Carrier offers nothing to support the Organization assertion that there was available equipment. The Carrier admitted that there was work being done and that other BMWED day forces were doing the work with the Contractors. The evidence shows the Overnight Crew claimants were available. If the day crew was using all the available equipment as the Carrier maintains, the Carrier would have a record. No record has been produced to support the defense.

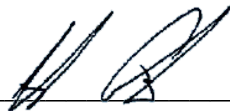
The Carrier did not refute the Organization's letter listing the available Carrier equipment available to the Claimant's on the Overnight assignment.

Claim sustained. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.



Patrick Crain

Carrier Member



Adam Gilmour

Organization Member



Brian Clauss

Neutral Member

Dated: December 20, 2023